THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.12525 OF 2004

Dated:21.07.2006

Between:

G.Venkateswara Rao.

... PETITIONER

And:

Deputy Registrar of Cooperative Societies, Nuzvid, Krishna District, and others.

...**RESPONDENTS**

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.12525 OF 2004

ORDER:

This writ petition is filed seeking a mandamus declaring the proceedings, dated 20.01.2000, issued by the first respondent, and the consequent orders, dated 08.03.2004 of the A.P. Cooperative Tribunal, Vijayawada in O.A.No.109 of 2002, as arbitrary and illegal.

It is the case of the petitioner that he was the honorary President of the Mustabada Farmers Service Cooperative Credit Society Limited, Mustabada, Gannavaram Mandal, Kirhsna District, for the years 1986 to 1988. While so, an audit of the Society was taken up and it came to light that there were some irregularities and misappropriation of funds of the Society, and therefore, proceedings under Section 60 of the A.P. Cooperative Societies Act were initiated and the petitioner was served with a show cause notice dated 03.07.1990, and he has submitted his explanation. Thereafter, surcharge proceedings dated, 20.01.200,

were issued against the petitioner. Aggrieved by the same, the petitioner filed O.A.No.109 of 2002 before the Andhra Pradesh Cooperative Tribunal, Vijayawada. The Appellate Tribunal, after perusal of the proceedings, dated 20.01.2000, issued under Section 60 of the Act, and other material made available before it and after hearing the parties, dismissed the appeal holding that the petitioner is responsible for committing misappropriation of funds of the Society. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that the audit pointed out that there were some wrong entries made in the cashbook on 16.05.1988 and 19.05.1988 by the persons in charge of the accounts i.e, one Chalapathi Rao and Jaganmohan Rao, and the petitioner is made responsible for the said entries on the ground that the said two persons have given a statement that they have made those entries on the directions issued by the petitioner, and neither those statements were given in the presence of the petitioner nor the petitioner was permitted to cross-examine them. In the absence of any such thing, accepting the oral statements of those two persons and making the petitioner responsible for the entries made in the cashbook on 16.05.1998 and 19.05.1998, is not legally permissible. Apart from that, no notice was issued to the petitioner when the enquiry under Section 60(1) of the Act was taken up by the authorities. Therefore, the impugned order is liable to be set aside.

Per contra, learned counsel for the respondents, while supporting the impugned order, stated that there is absolutely no truth in the statement made by the petitioner that he did not instruct Sri Chalapathi Rao and Jaganmohan Rao to make such entries in the cashbook, and therefore, the surcharge proceedings dated 20.01.2000, as confirmed by the Appellate Tribunal does not call for any interference of this Court under Article 226 of the Constitution of

India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side, and perusal the impugned order and other material made available on record.

The petitioner has asserted that he is an illiterate person and does not know how to maintain the accounts and supervise in strict sense. Even otherwise, the surcharge proceedings dated 20.01.2000 issued by the Deputy Registrar of the Cooperative Societies, Nuzvid, under Section 60 of the Act or the order passed by the Appellate Tribunal in O.A.No.109 of 2002 reveal as to what is the nature of the directions given by the petitioner and it seems they are all oral. Even assuming that they are oral, unless and until such statements are made in the presence of the petitioner and the petitioner is permitted to cross-examine them, and verify the truth of their statements, the impugned order would not stand to scrutiny of law. Therefore, the impugned order, dated 20.01.2000 is made in gross violation of the principles of natural justice and the same is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order, dated 20.01.2000, as confirmed in appeal in O.A.No.109 of 2002 dated 08.03.2004 on the file of the A.P. Cooperative Tribunal, is set aside and the matter is remitted to the Deputy Registrar of Cooperative Societies, Nuzvid, for taking up fresh enquiry into the matter, as required under Section 60(1) of the Act, and pass appropriate orders, in tune with the observations made a Division Bench of this court, in ***CHALLA SANYASINAIDU*** v. ***DEPUTY REGISTRAR OF CO-OP. SOCIETY, SRIKAKULAM***[1], which reads as under:

> "In the course of inspection under Section 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar prima facie is satisfied of the irregularities

on the basis of the report of the enquiry officer, he may initiate surcharge proceedings under Section 60. The report may form the basis for the Registrar to proceed under Section 60 and issue a surcharge order eventually. The person against whom a report is sent under Section 52 has no opportunity to squarely meet the allegations against him at that stage. He is not allowed to cross-examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as per the report of the enquiry officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause-notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry under Section 52 or permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated under Section 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article 226 of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order under Section 60 is passed. Therefore, we respectfully agree with the view taken by the learned Judge in *S.Rama Subba Rao v. President, Kaikuluru Irrigation and Power Department Sub Divisional Employees Co-operative Credit Society Limited (supra). Even in Mohd.Ghouse v. Deputy Registrar of Cooperative Societies, Vikarabad and others* (supra) the

learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the order, and the issurance of notice proposing to fix the liability under Section 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned Judge appear to strike a contrary note, and we do not therefore subscribe to the same."

The writ petition is accordingly allowed. No order as to costs.

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21.07.2006

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[1] 1998 (1) ALD 455 (DB)